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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 417

THE UNITED STATES OF AMERICA AND MESTA MACHINE COMPANY,

Appellants,

vs.

COUNTY OF ALLEGHENY, PENNSYLVANIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

WALTER P. SMART,
EDWARD G. BOTHWELL,
Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 417

MESTA MACHINE COMPANY AND THE UNITED STATES OF AMERICA,

Appellants,

vs.

COUNTY OF ALLEGHENY.

APPEAL FROM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT, AT NO. 77 MARCH TER., 1943

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now County of Allegheny, appellee, and, under the provisions of Rule 12, par. (3), of the Rules of this Court, makes the following statement disclosing matters and grounds making against the jurisdiction of this Court asserted by appellants, and includes herein its motion to dis-

miss or affirm the judgment sought to be reviewed in this appeal:

(1) The judgment of the Supreme Court of Pennsylvania sought to be reviewed in this appeal is one in affirmance of an assessment, as real estate, of appellant Mesta's mill or manufactory, made by the proper assessing authority under the provisions of a state statute directing such an assessment to be made for local tax purposes. The appealed decision is officially reported: *Mesta Machine Company* case, 347 Pa. 191.

(2) The appealed judgment is merely a decision reaffirming the settled law of the state that the words "mill or manufactory", as used in the statute, include all machinery upon the premises and essential to the operation thereof, irrespective of its ownership by a third party. The decision holds that the fact that the United States is the owner of some of the machinery comprising Mesta's mill is immaterial and that the assessment, as made, falls within and complies with the settled law of the state.

(3) The decision holds that the machinery owned by the United States is not assessed as the property of the United States and that, under the law of the state, the Government's paramount rights therein could not be divested or in any way affected by any default in payment of any tax based upon the affirmed assessment of Mesta's mill or manufactory.

(4) Appellant Mesta neither claims nor possesses, in its own right, any Federal right or immunity under the Constitution of the United States, or otherwise, which is in any wise prejudiced or adversely affected by the appealed judgment.

(5) Appellant United States neither claims nor possesses any Federal right or immunity under the Constitu-

tion of the United States, or otherwise, which is in any way prejudiced or adversely affected by the appealed judgment. The only possible interest of the United States in the case at bar arises *ex contractu* and constitutes, if anything, merely an economic burden voluntarily assumed.

(6) In the factual situation presented, the construction and application of the state statute as made by the appealed judgment, neither involves nor could involve a Federal question, nor does it either affect or purport to affect in any manner whatsoever any Federal right or immunity possessed by either of the appellants severally or by both of them jointly.

WHEREFORE, appellee respectfully moves the Court to dismiss the appeal herein or to affirm the appealed judgment.

COUNTY OF ALLEGHENY,
Appellee,

By WALTER P. SMART,
County Solicitor;
EDWARD G. BOTHWELL,
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